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ADDRESS REPLY TO:

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February 28, 1985

Edward J. Schwartzbauer
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2200 First Bank Place East
Minneapolis, Minnesota 55402

US EPA RECORDS CENTER REGION 5



514539

Re: U.S.A. et al. v. Reilly Tar & Chemical Corp. et al.

Dear Ed:

This letter replies to your February 25, 1985, letter, to Steve Shakman (which you copied to the Honorable Crane Winton) regarding the Pollution Control Agency staff's request that the Pollution Control Agency Board authorize the expenditure of superfund dollars to study the feasibility of discharging water from gradient control wells in St. Louis Park to surface waters.

In your letter you comment as follows:

I must point out that this [the feasibility study] is precisely what the PCA has ordered Reilly to do in its Request for Response Action issued December 18. Apparently the PCA no longer wants Reilly to do this, and has revoked the RFRA. If so, this is a funny way to tell us, and a funny way to run an agency.

Your assumption that the PCA has "revoked" the RFRA issued to Reilly is incorrect and may result from a lack of understanding of the statutory requirements of the agency. For your convenience, I will explain those requirements to you in this letter.

Minn. Stat. § 116.03, subd. 2 (1984) authorizes the Executive Director of the MPCA to enter into consulting contracts for the work of the office, but makes such contracts subject to the approval of the MPCA Board. As you are aware, the MPCA Board is a citizen board which meets approximately once a month to conduct the business of the MPCA. Thus, the MPCA Board is asked to make decisions, including authorizations to negotiate and enter into contracts, at its monthly meetings.

As required by Minn. Stat. § 115B.17, subd. 1 (1984), the Request for Response Action (RFRA) issued to Reilly on December 18, 1984, specifies actions which Reilly is requested to take and identifies the time frame for taking those actions. Among the specified actions is the feasibility study described in the first paragraph of this letter.

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Under the terms of the RFRA, Reilly was required to submit for MPCA Director approval a proposed plan for the feasibility study. The RFRA required that that submittal be made no later than February 4, 1985. The RFRA also requires that Reilly implement the feasibility study within 20 days of MPCA Director approval.


Reilly submitted its feasibility study plan on the required date. The MPCA Director is in the process of reviewing the submitted plan and will notify Reilly of his approval, disapproval or proposed modifications.

In the event that (1) the plan is approved (or, if it is disapproved, is revised in a timely fashion to make it approvable) and (2) Reilly implements the feasibility study within the deadlines specified in the RFRA, the MPCA will not authorize its contractor to begin to conduct the feasibility study. If, however, the plan is not approved or adequately revised, or if Reilly fails to implement the feasibility study in a timely fashion, the MPCA will wish to move expeditiously to have a contractor for the State conduct the feasibility study. In order to do this, the MPCA Board's authorization for the contract [under Minn. Stat. § 116.03, subd. 2 (1984)] must be in place.

In sum, the MPCA Board was asked at its last meeting to authorize a contract for the feasibility study so that the State could quickly conduct the work if Reilly fails to take the actions specified in the RFRA. Obviously, MPCA Board authorization for the Director to negotiate and enter into a contract does not "revoke" the outstanding RFRA to Reilly and does not preempt, in any way, the requirement that Reilly conduct the feasibility study.

If you wish to discuss this matter further, please contact me at 296-7345.

Very truly yours,


LISA R. TIEGEL
Special Assistant
Attorney General

LRT:lt
cc: Honorable Crane Winton
All counsel of record
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